

## Message Text

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71-61

ACTION L-03

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FM AMEMBASSY BOGOTA

TO USIA WASDC IMMEDIATE

SECSTATE WASHDC IMMEDIATE 4739

INFO DEPT JUSTICE WASHDC IMMEDIATE

UNCLAS BOGOTA 4094

USIAC

USIA FOR I/GC: SECSTATE FOR LEGAL ADVISOR

DEPT JUSTICE FOR CIVIL DIVISION FOR FOREIGN LITIGATION

SUBJECT: LITIGATION AGAINST MEDELLIN BINATIONAL CENTER

1. A LAW SUIT AGAINST THE BINATIONAL CENTER - AND BY IMPLICATION AGAINST THE U.S. GOVERNMENT - WAS FILED APRIL 6 AGAINST THE CENTRO COLOMBO-AMERICANO OF MEDELLIN. THE SUIT CHALLENGES A LONG HELD INSTITUTIONAL PREMISE THAT BINATIONAL CENTERS ARE LOCAL, AUTONOMOUS INSTITUTIONS THAT, THOUGH RECEIVING USG ASSISTANCE ARE, NONETHELESS, INDEPENDENT LEGAL COLOMBIAN INSTITUTIONS.

2. ON JANUARY 23, 1976, MARTHA DE DUARTE, SPECIAL COURSES ACADEMIC DIRECTOR OF THE CENTRO COLOMBO-AMERICANO OF MEDELLIN, WAS DISMISSED FROM HER POSITION FOR JUST CAUSE BY THE BNC DIRECTOR, FSIO MARY C. SMITH. MRS. DUARTE WAS DISMISSED BECAUSE SHE PERMITTED A STUDENT TO GRADUATE WHO HAD NEITHER COMPLETED THE PROGRAM NOR ATTENDED CLASSES.

3. ON APRIL 6 THE BNC WAS NOTIFIED BY JUDGE NUMBER 10 OF THE MEDELLIN LABOR COURT THAT DUARTE HAD INITIATED SUIT AGAINST THE BNC AS DEFENDANTS THE CENTRO  
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COLOMBO-AMERICANO AND ITS DIRECTOR, MARY C. SMITH.

4. ON THE TWO PRINCIPAL CHARGES LISTED IN MRS. DUARTE'S BRIEF, ONE WAS ANTICIPATED BY THE BNC AND CAN BE DEALT WITH LOCALLY: THIS IS, THAT MRS. DUARTE WAS DISMISSED WITHOUT JUST CAUSE AND THEREFORE IS ENTITLED TO AN INDEMNITY PAYMENT.

5. FAR MORE SERIOUS, BECAUSE OF THE IMPLICATIONS, IS MRS. DUARTE'S CLAIM TO A RETIREMENT PENSION, CHARGING THAT THE CENTRO COLOMBO AMERICANO OF MEDELLIN IS NOT AN INDEPENDENT AUTONOMOUS INSTITUTION BUT IS RATHER PART OF A COUNTRY-WIDE CENTRO COLOMBO-AMERICANO BNC SYSTEM, SUBORDINATE TO AND DEPENDENT ON "THE EMBASSY" IMPLIED IN HER CLAIM IS THE ALLEGATION THAT THE COLOMBIAN BNCS ARE PART OF A LARGER INSTITUTIONAL BNC SYSTEM DEPENDENT ON THE U.S. GOVERNMENT. THIS CHARGE IS MADE TO SUBSTANTIATE HER CLAIM TO APENSION, WHICH SHE COULD GET ONLY IF THE COURT UPHOLDS HER CONTENTION SHE WAS DISMISSED WITHOUT CAUSE AND IF HER PRIOR SERVICE IN BNC BARRANQUILLA WERE ADDED TO HER TIME AT BNC MEDELLIN. UNDER COLOMBIAN LAW AN EMPLOYEE WITH 20 YEARS CONTINUOUS OR DISCONTINUOUS EMPLOYMENT AND 50 YEARS OF AGE (WOMAN) AND 55 (MAN) IS ENTITLED TO RETIREMENT AND PENSION EVEN IF DISMISSED FOR CAUSE. HOWEVER, IF DISMISSED WITHOUT JUST CAUSE THEN AN EMPLOYEE WITH 10 YEARS CONTINUOUS OR DISCONTINUOUS EMPLOYMENT AND 60 YEARS OF AGE OR WITH 15 YEARS AND 50 OF AGE IS ENTITLED TO RETIREMENT AND PENSION.

6. EMBASSY PROPOSES TO ASK FONOFFICE TO INFORM THE COURT MS. SMITH IS A DIPLOMAT AND THEREFORE SUBJECT TO IMMUNITY ACCORDING TO VIENNA CONVENTION. WOULD PROPOSE IN ORDER TO FACILITATE CASE MS. SMITH OFFER DEPOSITION THROUGH DIPLOMATIC CHANNELS.

7. OUR LEGAL POSITION AND THAT OF BNC BOARD IS THAT BNC IS A LEGAL ENTITY UNDER COLOMBIAN LAW. WE HOPE THIS CAN BE CERTIFIED EITHER THROUGH THE LAWYERS OR THROUGH THE FOREIGN OFFICE TO THE COURT.

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8. QUESTION ARISES IN OUR MIND THAT IF WE MAINTAIN THIS POSITION, CAN WE SAFELY CLAIM IMMUNITY FOR DIPLOMAT WHO IS SERVING AS DIRECTOR OF A COLOMBIAN INSTITUTION, EVEN ON LOAN. THIS HAS BEEN ONE OF FUNDAMENTAL TENETS OF USIS-BNC RELATION.

9. MATTER DISCUSSED WITH USIA ASSISTANT DIRECTOR DILLON DURING APRIL 23-26 VISIT.

10. NEED KNOW SOONEST IF THERE ANY IMPEDIMENTS TO  
EMBASSY PROCEEDING AS OUTLINED ABOVE.  
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**TAGS:** OGEN, CPRS, US, VE, BINATIONAL CENTER  
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